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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SHASTA.

BRIEF FOR APPELLEE.

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INDEX.

Subject Index.

	Page
Brief for appellee	1
Opinions below	1
Jurisdiction	1
Statement of the case	2
Question	2
Analysis of ordinance	3
Summary of argument	4
1. A State may, in the exercise of its police power, place reasonable regulations and restrictions upon specific constitutional guarantees in the interest of public peace	4
2. The Board of Supervisors of the county was lawfully exercising the State police power	5
3. Every intendment should be resolved in favor of constitutionality	5
4. Not only is there no affirmative showing that the policy of this ordinance is arbitrary, but on the other hand, this limited regulation can be said to be reasonably calculated to promote the public welfare	6
(a) The issue as to the wisdom of this policy is controversial	6
(b) A number of tangible public benefits are brought about by the ordinance	7
(1) Removal of an obstruction from the public sidewalks, streets and highways	7
(2) The removal of an occasion of violence	9

Page

(3) Protection of business and those rightfully employed 10
(4) Public Tranquility is preserved 10
(c) The restriction on the individual right is not so great as to outweigh the public benefits 11
(d) Local conditions require regulation 12
(e) This ordinance is consistent with modern public policy respecting labor relations 13
B. The constitutional guarantee of freedom of assemblage is not abridged 13
C. There is no merit in the contention that the ordinance denies equal protection of the laws 14
D. The ordinance, as applied to the instant case, provides a definite standard of guilt 14
E. Appellant's authorities distinguished 15
F. Other contentions of appellant 21
Conclusion 22

Table of Cases Cited.

Crandall v. *Nevada*, 73 U. S. 35, 18 L. Ed. 745 18
City of Reno v. *Second Judicial District Court*, (Nev.) 95 P. (2d) 994 19
Davis v. *Massachusetts*, 167 U. S. 43; 42 L. Ed. 71 8, 11
DeJonge v. *Oregon*, 299 U. S. 355, 81 L. Ed. 278 17
Elkind and Sons v. *Retail Clerks International Protective Ass'n*, (N. J.) 169 A. 494, 114 N. J. Eq. 586 6
Ex Parte Stout, 82 Tex. Cr. Rep. 316, 198 S. W. 967 7
Ex Parte Young, 154 Cal. 117, 97 P. 822 21
Ex Parte Yung (Cal. App.), 94 P. 594 21
Fifth Avenue Coach Co. v. *City of New York*, 221 U. S. 467, 55 L. Ed. 815 7
Frend v. *U. S.*, 100 F. (2d) 691 8
Gitlow v. *New York*, 268 U. S. 652, 69 L. Ed. 1138 4

	Page
Great Northern v. *Minnesota*, 246 U. S. 434, 62 L. Ed. 817	5
Grosjean v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660	18
Hardie Tynes Mfg. Co. v. *Cruse*, 189 Ala. 66, 66 So. 657	6
Hague v. *C. I. O.*, 306 U. S. 624, 83 L. Ed. 1423	13, 17
Herndon v. *Lowry*, 301 U. S. 242, 81 L. Ed. 1066	17
In re Lyons, 27 Cal. App. 2d 293	19
Jones and Laughlin Steel Co. v. *N. L. R. B.*, 301 U. S. 1	14
Keith Theatre v. *Vachon*, (Vt.) 187 A. 692, 702,	6
Local Union v. *Stathakis*, (Ark) 135 86, 205 S. W. 450	6
Lyle v. *Local 452*, 174 Tenn. 222, 124 S. W. (2nd) 701 (Tenn.)	6
Lovell v. *Griffin*, 303 U. S. 444	15
Lassem v. *Getty* (Cal.), 72 Pac. 2d 183, 188	21
McKay v. *Retail Automobile Associations Local Union*, Cal. App. 97 C. A. D. 122, 89 P. 2nd 113	5
McLean v. *Arkansas*, 211 U. S. 539, 53 L. Ed. 315, 319	12
Near v. *Minnesota*, 283 U. S. 697	17
People v. *Armentrout*, 118 Cal. App. 752	3
People v. *Armentrout*, 118 Cal. App. 754	14
Peo. v. *Gidaly*, 3 Cal. Supp. 125, 93 P. 2nd 660	7
People v. *Harris* (Colo.), 91 P. 2d 989	20
Pierce v. *Stablemen's Union*, (Cal.) 156 Cal. 70, 103 P. 324	6
Presser v. *Illinois*, 116 U. S. 282, 29 L. Ed. 615	13
Schneider v. *Irvington*, 84 L. Ed. Adv. Op. 115, etc. (Four handbill cases)	15
Schenck v. *U. S.*, 249 U. S. 47, 63 L. Ed. 470	4
Senn v. *Tile Layers Union*, 301 U. S. 468, 81 L. Ed. 129	5, 18
St. Germain v. *Bakery, etc. Union*, (Wash.) 97 Wash. 282, 166 P. 665	6
Stromberg v. *Calif.*, 283 U. S. 359	17
Thomas v. *Indianapolis*, 195 Ind. 440, 145 N. E. 550, 552	6
Thomas v. *Indianapolis*, 145 N. E. at page 553	7

Page

Thornhill v. *Alabama*, 189 So. 913 (Ala.) 6
Truax v. *Corrigan*, 257 U. S. 312, 340 6
Whitney v. *Calif.*, 274 U. S. 357, 71 L. Ed 1095 4
Watters v. *Indianapolis*, 191 Ind. 671, 134 N. E. 482 7

STATUTES CITED.

Section 4041.25, Political Code of California 5

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JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appellee.

BRIEF FOR APPELLEE.

Opinions Below.

The opinion below is printed together with the opinion in a related case at pages 72 and 73 of the transcript of record.

Jurisdiction.

The jurisdiction of this Court rests on Section 273 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928. The appellant, John Carlson, was convicted in the Justice's Court of Township Number Nine, Shasta County, California, for a violation of a county ordinance. The judgment was affirmed by the Superior Court of Shasta County from which there is no further appeal allowed in the State courts. The case comes here on appeal.

I.

Statement of the Case.

Appellant was convicted of violating an ordinance of the County of Shasta prohibiting peaceful picketing. He was one of twenty-nine (29) C. I. O. pickets, picketing on the right of way of a main public highway, known as U. S. Highway No. 99 in the County of Shasta, State of California (Tr. p. 22). Defendant was carrying a banner (Tr. p. 38, Ex. b-4) on which was inscribed "This job unfair to C. I. O." Other members of the group were also carrying signs and banners containing such inscriptions as "Don't be a scab" (Ex. b-1), "Shasta Tunnel and Construction Worker's Local 260" (Ex. b-2), and "C. I. O. Picket Line" (Ex. b-3). The picketing took place at the site of a tunnel project being constructed in close proximity to the highway (Tr. p. 22). At that time, there was a dispute over jurisdiction of the tunnel job between the A. F. of L. and the C. I. O. (Tr. pp. 30 and 31). Work was going on at the tunnel project and workers were passing through the picket lines (Tr. p. 41). The signs were carried in such a manner that they were being shown to the A. F. of L. workers on the job (Tr. p. 25). The record further shows that for some time the dispute over jurisdiction between the A. F. of L. and the C. I. O. on this project had existed, and that it even became necessary to shut down the job on several occasions in order to settle the dispute.

II.

Question.

The question before this Court is whether or not the Shasta County Board of Supervisors has exceeded its legislative authority in adopting an ordinance which pro-

hibits peaceful picketing in public places, under certain conditions therein set forth.

The ordinance is attacked by appellant on several grounds:

(1) That it abridges the constitutional guarantees of freedom of speech and of the press.

(2) That it abridges the constitutional guarantee of the right of peaceable assemblage.

(3) That it denies equal protection of the laws in that, as is stated in Appellant's brief, in practice the ordinance is used only against workers.

(4) That it is too vague and indefinite to provide a standard of guilt.

III.

Analysis of Ordinance.

The ordinance prevents picketing, and the carrying of signs, banners, and other displays, under the following conditions:

(1) Where it is done in a public place, and

(2) At or near the scene of a labor controversy, and

(3) For the purpose of dissuading others from,

(a) Entering such place, or
(b) Purchasing goods, or
(c) Entering there to work.

The ordinance does not prevent:

(1) The selling of newspapers and shouting of headlines at the point of dispute.

People v. *Armentrout*, 118 Cal. App. 752.

(2) Loitering, picketing and carrying of signs and banners anywhere away from the scene or vicinity of the

controversy, including private places, such as at a factory or place of employment, where a lock-out or strike may be in progress.

(3) The passing out of literature either at the place of dispute or away from it, giving all of the facts concerning a labor dispute.

(4) Parades where signs, banners, loudspeakers and other means of communication are used.

(5) Printing or advertising in newspapers; it is a matter of common knowledge that labor disputes are news and all important information about the union position is usually given free of charge.

(6) Radio broadcasts.

(7) Meetings in private halls where the public is invited or public mass meetings in any public places away from the scene of dispute, at which one may picket, or discuss or speak upon, all phases of labor disputes.

Upon analysis, it will be seen, also, that the ordinance provides for no form of censorship or licensing, and regulates in no way *what* may be said, but only regulates the *method* or *means* of communication, under limited circumstances.

IV.

Summary of Argument.

A. The ordinance does not abridge freedom of speech or of the press.

1. A State May, in the Exercise of its Police Power, Place Reasonable Regulations and Restrictions upon Specific Constitutional Guarantees in the Interest of Public Peace.

Whitney v. *Calif.*, 274 U. S. 357, 71 L. Ed. 1095;
Gitlow v. *New York*, 268 U. S. 652, 69 L. Ed. 1138;
Schenck v. *U. S.*, 249 U. S. 47, 63 L. Ed. 470.

2. The Board of Supervisors of the County was Lawfully Exercising the State Police Power.

> "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." Constitution of California, Article XI, Section 11.

The police power of the county is exercised by the action of the Board of Supervisors. Section 4041.25, Political Code of California.

This ordinance as applied to Appellant is not in conflict with any of the general laws of the State.

Appellant contends that this ordinance conflicts with Section 923 of the Labor Code in the State of California. It has been specifically held in a recent California Appellate case that Section 923 of the Labor Code does not guarantee a right to peacefully picket for the purpose of bringing about recognition of a collective bargaining agency where the contractor has already recognized another agency.

McKay v. *Retail Automobile Associations Local Union*, Cal. App. 97 C. A. D. 122; 89 P. 2nd 113.

3. Every Intendment Should be Resolved in Favor of Constitutionality.

It is incumbent upon opponents of a law to demonstrate that the law clearly is unreasonable, arbitrary and capricious. In the absence of such an affirmative showing, this Court will not superimpose its judgment as to the policy of a statute on that of the legislative authority.

Senn v. *Tile Layers Union*, 301 U. S. 468; 81 L. Ed. 1229;

Gitlow v. *New York, supra;*

Whitney v. *Calif., supra;*

Great Northern v. *Minnesota*, 246 U. S. 434, 62 L. Ed. 817.

4. Not Only is There No Affirmative Showing That the Policy of This Ordinance is Arbitrary, But on the Other Hand, This Limited Regulation Can Be said to Be Reasonably Calculated to Promote the Public Welfare.

(a) The Issue as to the Wisdom of this Policy is Controversial.

(1) Authorities in a number of jurisdictions have held picketing in its very nature to be inimical to the public welfare, as tending to breaches of the peace.

Elkind and Sons v. *Retail Clerks International Protective Ass'n*, (N. J.) 169 A. 494; 114 N. J. Eq. 586;

Pierce v. *Stablemen's Union*, (Cal.) 156 Cal. 70, 103 P. 324;

Local Union v. *Stathakis*, (Ark.) 135 Ark. 86, 205 S. W. 450;

St. Germain v. *Bakery, etc. Union*, (Wash.) 97 Wash. 282, 166 P. 665;

Lyle v. *Local 452*, 174 Tenn. 222, 124 S. W. (2nd) 701 (Tenn.);

Keith Theatre v. *Vachon*, (Vt.) 187 A. 692, 702;

Truax v. *Corrigan*, 257 U. S. 312, 340.

Said the Court in *Thomas* v. *Indianapolis*, 195, Ind. 440, 145 N. E. 550, 552:

> "Although the person, or persons, on picket duty may not by word or gesture make any threat or use any force, we all know that in most of such cases the very presence of the picket is apt to give rise to contentions and arguments that often result in bloodshed and riots."

(2) A number of jurisdictions have held such ordinances and statutes to be a reasonable exercise of the police power.

Thornhill v. *Alabama*, 189 So. 913 (Ala.);

Hardie Tynes Mfg. Co. v. *Cruse*, 189 Ala. 66, 66 So. 657;

Thomas v. *Indianapolis, supra;*
Watters v. *Indianapolis,* 191 Ind. 671, 134 N. E. 482;
Ex Parte Stout, 82 Tex. Cr. Rep. 316, 198 S. W. 967;
Peo. v. *Gidaly,* 3 Cal. Supp. 125, 93 P. 2nd 660.

Said the Court in *Thomas* v. *Indianapolis,* 145 N. E. at page 553, quoting *Hardie Tynes* v. *Cruse, supra:*

> "Perhaps our legislature has taken the view, adopted by some of the courts, that in actual practice there is and can be no such thing as peaceful picketing or peaceful persuasion. Certainly this is the effect of our statutes."

(3) The policy is, therefore, one which is not wholly arbitrary. A *bona fide* dispute exists as to its wisdom.

(b) A Number of Tangible Public Benefits Are Brought About by the Ordinance.

It is contended by Appellant that no substantial reasons can be advanced for supporting the validity of the ordinance. Following are a number of police power objects and substantial purposes warranting the exercise of the police power.

(1) *Removal of an obstruction from the public sidewalks, streets and highways.*

This Court has sustained the authority of municipalities to regulate the use of public ways and other public places. It is admitted by appellant that the picketing was being conducted upon a highway with automobiles "whizzing by." This brings the regulation as to this particular case within the rule in *Fifth Avenue Coach Co,* v. *City of New York,* 221 U. S. 467, 55 L. Ed. 815. The court there sustained the authority of the legislature in the exercise of the police power to regulate the use of the streets by prohibiting the

display of signs and banners on vehicles because the same would attract attention and thus interfere with traffic and cause congestion.

In *Davis* v. *Massachusetts*, 167 U. S. 43; 42 L. Ed. 71, defendant was entirely prohibited, because he had no permit, from making a public address in a public square. Said the court, in 42 L. Ed. at page 72, adopting the language of the Massachusetts Court:

> "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary right interferes, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes. * * *"
>
> "It is therefore conclusively determined there was no right in the plaintiff in error to use the common except in such mode as the legislature in its wisdom may have deemed proper to prescribe. * * *;
>
> "Plaintiff in error cannot avail himself of the right granted by the State and yet obtain exemption from the lawful regulations to which this right on his part was subjected by law."

On the authority of *Davis* v. *Massachusetts*, *supra*, the United States Court of Appeals of the District of Columbia, in *Freed* v. *U. S.*, 100 F. (2d) 691, sustained the validity of a Joint Resolution of Congress as a reasonable and proper restriction on the right of freedom of speech and assembly. A petition for writ of certiorari in that case was denied by this Court at 306 U. S. 640; 83 L. Ed. 1040.

The Resolution made it unlawful, within 500 feet, of an embassy, legation, or consulate in the District of Columbia to display any flag, banner, placard or device designed or adopted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or to bring

into public disrepute its political, social, or economic acts or views, or to intimidate, coerce, harass, or bring into public disrepute any diplomatic or consular representatives, or to congregate within five hundred feet of any embassy, legation, or consulate and refuse to disperse after being ordered to do so by the police authorities.

Said the court in 100 F. (2d) at page 693:

> "These are reasonable and proper restrictions. In them there is no abridgement of the right of speech or of assembly or of any other constitutional right of the citizen. It has never been considered that the right in the public to use the streets is unlimited or that it may be exercised in defiance of the laws of the United States or the states; on the contrary it has always been considered that a municipality may control and regulate the use of the streets in the general good";

It is true that the legislative object of the Joint Resolution in that case and the ordinance in question are quite different. It is to be remembered, however, that the contention of appellant is that an unreasonable and arbitrary restriction is imposed upon his individual rights. The individual restriction in this case is almost identical. Peaceful picketing is prohibited only in proximity to a place where the views thereby declared may be considered most offensive and mo t likely to cause friction. All other methods of disseminating those views are preserved. The restriction, in this case also, is limited and is a reasonable exercise of the power of the public to regulate public places.

(2) *The removal of an occasion of violence.*

It is a matter of common knowledge that violence frequently results from the activity of partisans at the scene of a labor controversy. By preventing the congregation of such partisans under tense circumstances openly declaring their partisanship and disapproval of the conduct of others, an occasion of violence will be removed.

(3) *Protection of business and those rightfully employed.*

The reports are replete with cases involving the injury to businesses and those rightfully employed by such businesses from abuses arising out of picketing, boycotts, and the use of false banners, and some enjoin the annoyance resulting from such action, whether peaceful or otherwise. Apparently the legislature has determined on which side of such disturbances and controversies the public interest lay. Such a determination is consistent with and even adopts the principles of recent cases in California involving peaceful picketing.

> *In re Lyons*, 27 Cal. App. 2d, 293 (wherein the court specifically reserves the question of the constitutionality of a statute or ordinance); *McKay* v. *Retail Automobile Salesman's Local Union* (injunction against peaceful picketing to compel recognition of collective bargaining agent of pickets [Cal. App.] 97 C. A. D. 122, 89 Pac. 2d, 426, 90 Pac. 2d 113).

(4) *Public Tranquility is preserved.*

Public concern and disquiet such as gave rise to this ordinance, is a factor which the legislature may consider. Any annoyance and disturbance of the public mind sufficient to bring about such enactments has a direct bearing upon the public welfare. It is specious argument to contend that no unlawful act is committed, and that there is a remedy for such acts as criminal libel, and slander, battery and obstruction of public ways, etc. Such things have been made unlawful only because they also in some way outrage the public conscience and thus affect the public welfare. The injury in each of such instances is done to private persons, and individual liberties are restrained by making them unlawful. If the repercussions of a new-found strength in organized labor so affect the public conscience as to result in a greater restriction on this right which the interest of public freedom requires, in return for other liberties now

granted to labor, such adjustment should be affirmatively shown to be arbitrary before it is upset.

(c) *The Restriction on the Individual Right is not so great as to outweight the Public Benefits.*

(1) There is no constitutional guarantee of the right to picket. The only right guaranteed is a right to disseminate the facts concerning a labor dispute without abusive and arbitrary restriction. As is shown under "III, Analysis of Ordinance," innumerable means of communication are reserved to appellant and his associates with full opportunity by those means to publicize their position and views.

(2) It is incumbent on appellant to make an affirmative showing that the ordinance in some way has caused an arbitrary and unreasonable restriction on the exercise of his individual right. We submit that no such showing has been made.

(3) In an earlier era when labor was experiencing a period of struggle and oppression, such regulation of picketing might have been an injurious curtailment of the publication of facts concerning a labor dispute, as picketing was indeed one of the few means labor possessed of publicizing its cause. Fortunately, however, enlightened legislation and an enlightened judicial interpretation of the Constitution have resulted in an improvement in the status of labor, in which it is far removed from that period in which it was believed that labor was entitled to concessions which have been, with the approval of this court, denied to others.

Fifth Avenue Coach Co. v. *City of New York, supra* (ordinance prohibiting operation of advertising wagon of streets);

Davis v. *Massachusetts*, 167 U. S. 43 (ordinance prohibiting speech in Public Square);

Frend v. *U. S.*, 100 F. (2d) 691, *supra*.

Progressive legislation and liberal jurisprudence have not only enabled labor to become powerfully organized but have rendered such organization effective to the point that, unwisely managed, it could become an instrument of oppression. Labor is no longer a pawn of capital. In size and wealth it outstrips most business. Its influence is felt equally with that of business, if not more so, in all manner and means of communication.

Agencies have been established through which the rights of the laboring man have been made secure. The record shows that appellant has filed a complaint before the National Labor Relations Board (Tr. 34), wherein an attentive forum was provided for the statement of his position and the redress of the injury of which he complained. How much more effective is such machinery than the act of picketing.

(d) *Local Conditions require Regulation.*

The record shows that in Shasta County considerable construction amounting to many millions of dollars is taking place on the Central Valley Project, pursuant to an Act of Congress. The Shasta Dam alone involves an expenditure of approximately thirty-five million dollars. To deny the legislative authority charged with maintaining order in a locality, where such a volume of construction labor is employed, the means of so doing, according to their discretion, would be an unwarranted invasion of the legislative province.

> "The legislature, being familiar with local conditions, is primarily the judge of the necessity of such enactments."
>
> *McLean* v. *Arkansas*, 211 U. S. 539, 53 L. Ed. 315, 319.

(e) *This ordinance is consistent with modern public policy respecting labor relations.*

With the establishment of modern machinery for the promotion of peaceful arbitration and harmonious relations between capital and labor, and between the internal divisions of labor, it is seeking a just concession, for the public to request labor, in return, to desist from conduct, from which so many evils and so much violence have been known to flow.

The recitals contained in the ordinance recognize that due to a new found freedom on the part of labor, and its resulting strength, different groups in labor, vying for supremacy, have broken up into factions warring against each other, as in the instant case, to the annoyance of the public tranquillity and welfare. To offset the repercussions of such development, the public reasonably asks this adjustment, to retain its freedom from undue disturbance and to further peaceful settlement of labor disputes.

B. The Constitutional Guarantee of Freedom of Assemblage Is Not Abridged.

1. The statement of Mr. Justice Stone in *Hague* v. *C. I. O.*, 306 U. S. 624; 83 L. Ed. 1423, does not apply as the assemblage was for the purpose of protesting the performance of the work by the A. F. of L. and not for the purpose of discussing an Act of Congress.

2. Assuming that the assemblage in this case came within the class to which the constitutional guarantee extends, it has nevertheless been held that this privilege is subject to regulation by the state in the reasonable exercise of its police power.

Presser v. *Illinois*, 116 U. S. 282; 29 L. Ed. 615.

C. There Is No Merit in the Contention that the Ordinance Denies Equal Protection of the Laws.

No administrative authority is given to any individual or agency to determine who does and who does not come within its terms, as in the cases of *Yick Wo* v. *Hopkins*, 118 U. S. 220, and *Hague* v. *C. I. O., supra.* The ordinance applies in specific terms to "any person."

D. The Ordinance, as Applied to the Instant Case, Provides a Definite Standard of Guilt.

1. It is contended that the term "picketing" is too vague and indefinite. This term has a well defined meaning as set forth in the case of *Thomas* v. *Indianapolis, supra.*

2. It is also contended that the *Hague* case holds a prohibition of "carrying signs and banners" to be invalid. The mere fact that the ordinance in the *Hague* case prohibited the carrying of signs, banners, or placards is not enough to construe that decision as preventing regulation of such conduct. The Court did not pass on the legality of that provision but held that the ordinance denied equal protection of the laws in allowing an official to determine by a pliable standard who came within its provisions.

3. It is also contended that the term "picketing" includes the distribution of handbills. No mention is made of such distribution in the terms of the ordinance. The term "picketing" is capable of a construction which excludes such conduct. *Thomas* v. *Indianapolis, supra.* Certainly it is then capable of a construction which will preclude invalidity, and courts will not under such circumstances place a construction on it which would make it unconstitutional.

People v. *Armentrout*, 118 Cal. App. 754;
Jones and Laughlin Steel Co. v. *N. L. R. B.*, 301 U. S. 1.

4. Defendant is charged with and admitted "carrying signs and banners" in violation of the ordinance. This is a specific act clearly defined. There is no dispute as to the fact, and therefore defendant comes within the provision prohibiting the carrying of signs and banners for the purposes set forth. Even if the term "picketing" were too broad or too vague, nevertheless under the saving clause in Section 3, the use of such term will not invalidate the part defining the specific act of which Appellant was convicted, to wit, "carrying of signs and banners."

E. Appellant's Authorities Distinguished.

1. *Schneider* v. *Irvington*, 84 L. Ed. Adv. Op. 115, etc. (Four handbill cases);
Lovell v. *Griffin*, 303 U. S. 444.

These cases involved the constitutionality of ordinances, licensing the distribution of handbills (Irvington and Griffin Ordinances) and prohibiting the distribution of handbills (Los Angeles, Worcester, and Milwaukee Ordinances). There were two main grounds of decision.

(a) That the bestowal of authority on an individual or public agency to grant the licenses and to thus distribute them discriminately, was a denial of equal protection and allowed *censorship* of publications.

In this ordinance, there is no provision for licensing, and that element, is, therefore, not present.

(b) That the prevention of *all* distribution of handbills was a drastic measure, as compared with the remoteness and relative importance of the legislative object, cleanliness of streets.

The ground of decision on this point is two-fold:

(1) The means did not bear a direct and substantial relation to the end sought after. The object was too remote.

A more direct means of attaining cleanliness of streets would have been to make the throwing of handbills in the streets unlawful.

(2) The single public benefit did not warrant the drastic restriction on the individual right.

In this case:

(1) As previously shown, a number of evils *directly* resulting from the act of picketing are removed.

a. Obstruction of streets, sidewalks, and highways.
b. The congregation of known partisans under tense circumstances.
c. An occasion of violence.
d. The known abuses of this practice.
e. Irreparable damage to businesses.
f. Disturbance of the public mind and an occasion of annoyance to persons lawfully using public places.

(2) On the other hand, as outlined under "III, Analysis of Ordinance," and in the argument heretofore, concerning the limited restriction of the individual right, we have a much less drastic and reasonable limitation on the right to disseminate information concerning a labor dispute.

Appellant's brief dwells upon certain language of this Court contained in the handbill cases to the effect that streets are the natural place for the dissemination of information. It is argued that, therefore, no restriction should be placed upon the use of the streets for this purpose. We submit that this Court was there speaking with reference to the facts of that case and of an unreasonable regulation of public places. The citation of such language in this case begs the question, for certainly it is not denied that reasonable restrictions may be imposed.

2. *Hague* v. *C. I. O.*, 306 U. S. 624, 83 L. Ed. 1423.

The ordinance in the *Hague* case also provided for licensing. That case came up on a record which showed a capricious and arbitrary censorship and oppression of persons seeking to publicly declare their political views.

There is no such situation involved here. The ordinance does not provide for licensing or allow censorship. The classification is reasonable and sound. It only prohibits picketing in a public place, near the scene of a labor controversy, and for purposes which may cause friction.

3. *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. Ed. 1066;
DeJonge v. *Oregon*, 299 U. S. 355, 81 L. Ed. 278;
Schenck v. *U. S.*, *supra*;
Whitney v. *Calif.*, *supra*;
Stromberg v. *Calif.*, 283 U. S. 359;
Near v. *Minnesota*, 283 U. S. 697.

These cases all involve the limitation on and regulation of the *content* of publications. They placed restrictions on *what* might be published. A different rule, the rule of "clear and present danger," applies to cases of that nature, as the censorship of the character and content of a publication certainly is a more dangerous restriction on both the individual and public than a mere regulation of the *means* of disseminating such information, under certain conditions, as in this case.

The cases of *Herndon v. Lowry*, *DeJonge v. Oregon*, and *Stromberg* v. *California* all, in addition to having the above ground of decision, recognized a remoteness between the means adopted and the evil attacked. The *Whitney* case and *Schenck* case, on the other hand, went farther than the present case and actually imposed restrictions on the *content* of publications.

4. *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660.

The statute in this case was held to abridge the freedom of press because, in view of the legislative purpose, namely, the raising of revenue, the regulation was considered as not reasonably calculated to serve that objective. No sound basis for restricting the circulation of large newspapers and thus hampering the free dissemination of information was shown, as previously stated. There is no contention in this case that one legislative purpose is attempted under the pretext of accomplishing another.

5. *Crandall* v. *Nevada*, 73 U. S. 35, 18 L. Ed. 745.

This case is not in point. It was a case involving the passage from one state to another and interference with the Federal Authorities over interstate commerce. There is no such question involved here.

6. *Senn* v. *Tile Layers Union*, 301 U. S. 468, 81 L. Ed. 1229.

(a) This is a case which approves the exercise of legislative discretion. It holds that if the legislature reasonably believes that it is a wise public policy to make peaceful picketing lawful and to prevent injunctions against it, that, whether the policy is wise or unwise in the opinion of the court, that is a matter for the legislature and it may do so in the exercise of its police power.

Counsel for Appellant upholds this legislative discretion with great enthusiasm where he approves of the policy, but he is not willing to give the legislature the same discretion where it adopts a policy of which he disapproves.

The decisions of this Court have consistently held that the issue in these cases is not one of *policy* but one of *power*. The very fact that the issue raised by the *Senn*

case was fully considered by this Court, and that it was called upon to determine whether an act was unconstitutional which freed picketing from restriction, is strong ground for holding that the restriction of it by another legislative body, is not arbitrary and capricious.

(b) The holding in this case clearly states the principle sustaining the constitutionality of the ordinance in question. Quoting from 81 L. Ed. at page 1236:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed, by the Federal Constitution. The State m in the exercise of its police power, regulate the *methods* and *means* of publicity *as well as the public streets.*" (Italics supplied.)

7. *City of Reno* v. *Second Judicial District Court*, (Nev.) 95 P. (2d) 994.

(a) This case was based upon certain authorities which recognized a constitutional right to engage in peaceful picketing in the absence of statute. One of the cases cited as authority for the proposition that the right is guaranteed by the Constitution is the case of *In re Lyons*, 27 Cal. App. 2d 293. Those cases do not establish a right that is absolute and subject to no restriction.

Said the Court in the Lyons case, page 298:

> "In California there is no statute either prohibiting or permitting peaceful picketing, under the circumstances here involved as is now the case in some jurisdictions."

And again, at page 306:

> "Before closing this opinion we should again call attention to the fact that no statute or ordinance prohibiting or regulating picketing is here involved. What

may be the right under the police powers of the state, or any of its political subdivisions, to prohibit or regulate the use of public streets or sidewalks for picketing is not before us and is not decided."

(b) The reasoning of the court in declaring the ordinance to be an invasion of the constitutional guarantee is unsatisfactory and furnishes no intelligent approach to our question.

Vol. 95 P. 2d, p. 1001:

"Liberty regulated by law is a fundamental of our democratic government. However, neither freedom of speech nor liberty of action may be suppressed under the guise of regulation.

"They are not subject to the exercise of arbitrary power.

"Any annoyance or loss of business caused to an employer by *lawful* picketing does not warrant the exercise of the police power of the state." (Italics supplied.)

8. *People* v. *Harris* (Colo.), 91 P. 2d 989.

(a) The opinion in this case concludes that the restriction is arbitrary, yet no affirmative showing is made of a restriction of an individual right so drastic as to outweigh the public benefits reasonably sought to be accomplished.

(b) The language of the court shows a disregard for the real issue, and the reasoning is very unsatisfactory:

"Where a law, such as section 90, here under consideration, *impairs* freedom of speech * * * we have no doubt that it constitutes an invasion of constitutional guarantees"; (Italics supplied.)

The court has apparently disregarded and foreclosed any right in the legislature to impair freedom of speech by imposing reasonable restrictions upon it in the exercise of the police power.

F. Other Contentions of Appellant.

1. The validity of this ordinance does not depend on recitals therein.

(a) Much is made by appellant of certain recitals constituting the emergency declaration which made the ordinance immediately effective. This declaration is no part of the ordinance, and its validity is not to be determined by anything contained by way of recital in the ordinance.

Lassem v. *Getty* (Cal.), 72 Pac. 2d 183, 188;
Ex Parte Young, 154 Cal. 117, 97 P. 822;
Ex Parte Yung (Cal. App.), 94 P. 594.

Said the court in the case of *Ex Parte Yung, supra*:

> "It is not necessary that the reason for its enactment be set up unless the legislative or constitutional authority for the passage of ordinances requires it." Citing *Mayer* v. *Dry Dock*, 133 N. Y. 104, 30 N. E. 563.

Sections 4057 and 4058 of the Political Code of California, which provide for the form of county ordinances, do not require any declaration of policy or other recitals.

(b) The urgency clause to which appellant attaches so much importance is required by Section 4058 of the Political Code of California *solely* for the purpose of making an ordinance immediately effective, where there is shown to be an emergency involving immediate preservation of public peace, health, or safety.

2. Much reliance is placed upon voluminous opinions and conclusions of the witnesses Wiese and Morgan concerning labor disputes. It is presumed that the legislature has entered as fully, if not more so, into the various considerations of public policy on which the ordinance is based and has made its determination with full knowledge of the matters testified to. The mere opinions and con-

clusions of individuals which do not even qualify as expert testimony, certainly are not of themselves a ground for upsetting the legislative determination. It is still incumbent on appellant to show a substantial injury to an individual right, which it is submitted he has not done.

Conclusion.

The ordinance in question is a necessary police power regulation of a real substantial evil, which neither censors nor prohibits freedom of speech or assembly, but subjects them to reasonable restrictions, entirely consistent with the most modern decisions of this Court on the regulation of such constitutional guarantees. It is, therefore, submitted that the ordinance in question does not deprive appellant of any constitutional right that it was a valid exercise of the police power; and that the judgment of the lower court should therefore be affirmed.

Respectfully submitted,

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